

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TEXAS BANKERS ASSOCIATION;
RIO BANK, MCALLEN, TEXAS; and
AMERICAN BANKERS ASSOCIATION

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his official
capacity as Director of the Consumer Financial
Protection Bureau,

Defendants.

Case No: 7:23-cv-00144

**PLAINTIFFS'/INTERVENORS' OPPOSED MOTION TO
STAY AND TOLL THE CFPB DEADLINES PENDING APPEAL**

Plaintiffs and Intervenors are filing a notice of appeal (as soon as this Court rules on this motion) from this Court's Final Judgment, ECF No. 123, and plan to seek expedition of that appeal and a stay of the compliance deadlines from the Fifth Circuit for the Consumer Financial Protection Bureau's "Final Rule" at issue here—88 Fed. Reg. 35150 (May 31, 2023). Consistent with Federal Rule of Appellate Procedure 8(a)(2)(A)(ii) and pursuant to Local Rule 7.1, however, Plaintiffs/Intervenors seek that relief from this Court first. Much like this Court did pending the outcome of *CFPB v. Cnty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 422 (2024), this Court should issue an order staying and tolling the compliance deadlines for the Final Rule and its enforcement until the Fifth Circuit resolves Plaintiffs'/Intervenors' appeal, *see* ECF No. 25 at 17; ECF No. 69 at 7-8.

This Court should do so because Plaintiffs/Intervenors satisfy the requirements for such a stay. *See Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023) (setting forth

the stay factors). Although Plaintiffs/Intervenors recognize that this Court disagreed with its arguments under the APA, Plaintiffs/Intervenors respectfully submit that, as detailed in their summary-judgment briefing, there are substantial arguments to be presented on appeal that the Final Rule is in excess of statutory authority, and arbitrary and capricious. *See* ECF No. 79 at 10-34; ECF No. 95 at 3-30. Moreover, as detailed in the declarations filed in support of Plaintiffs'/Intervenors' preliminary-injunction motions, ECF No. 12-1, Exhibit A; ECF No. 12-2, Exhibit B; ECF No. 12-3, Exhibit C; ECF No. 44, Exhs. 1-3; ECF No. 45, Exhs. A-C; ECF No. 54, Exhs. A, B, and as this Court recognized when it granted preliminary relief earlier in this litigation, Plaintiffs'/Intervenors' members will be irreparably harmed if the compliance deadlines are not paused, ECF No. 25 at 13-14; ECF No. 69 at 2-3, and the balance of equities favors a stay because the harms Plaintiffs/Intervenors will incur are substantial and irreparable and any claimed harm to Defendants is, at best, minimal, *see* ECF No. 69 at 3-4. Any harms to the government from delay will be mitigated by the request for an expedited appeal.

For the foregoing reasons, Plaintiffs/Intervenors ask this Court to issue an order staying and tolling the compliance deadlines for the Final Rule and its enforcement until the Fifth Circuit resolves Plaintiffs'/Intervenors' appeal.

October 15, 2024

Respectfully submitted,

/s/ John C. Sullivan

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(D), I hereby certify that I conferred with Kevin Friedl and Karen Bloom, Counsel for the CFPB, by email on October 15, 2024 regarding the relief sought in this Motion. Defendants are opposed to the relief sought in this Motion.

/s/ John C. Sullivan
John C. Sullivan

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on October 15, 2024, via the CM/ECF system and via email courtesy copy to Counsel for Defendants.

/s/ John C. Sullivan
John C. Sullivan

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

This document was prepared using Microsoft Word 365, 2022 Version. It is written in Times New Roman typeface using 12-point font. The Motion to Stay Pending Appeal contains 400 words.

/s/ John C. Sullivan
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Counsel for Plaintiffs